

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DRAGOMIR TASKOV,

Defendant.

Case No. 2:10-cr-00217-PMP-PAL

**ORDER**

(Mtn to Sever - Dkt. #52)

On August 24, 2010, the court held a hearing on Defendant Dragomir Taskov's Motion to Sever (Dkt. #52) filed July 13, 2010, and the government's Response in Opposition (Dkt. #52) filed July 21, 2010. The court has considered the Motion and the Opposition.

**BACKGROUND**

On May 18, 2010, the grand jury returned an Indictment (Dkt. #1), charging Taskov in thirty-two counts with crimes of conspiracy, in violation of 18 U.S.C. § 371; wire fraud, in violation of 18 U.S.C. § 1343; interstate transportation of stolen property, in violation of 18 U.S.C. § 2514; receipt of stolen property, in violation of 18 U.S.C. § 2514, and aiding and abetting, in violation of 18 U.S.C. § 2. Taskov is joined for trial with his co-defendants Dimitar Dimitrov, Boyan Gierorguiev, Rossen Daskalov, Yuliyen Milushev, and Nikolay Mladenov.

Relying on Rule 14(a) of the Federal Rules of Criminal Procedure, Taskov asserts that he will be severely prejudiced by his joinder with the other Defendants. He argues that he has a markedly different degree of culpability from his co-Defendants, and under the Supreme Court's ruling in *Zafiro v. United States*, 506 U.S. 534 (1993), he faces a heightened risk of prejudice. He asserts he has a lawful defense to each of the charges in the Indictment (Dkt. #1), and his role as a participant was relatively minor. If he is tried with the other Defendants, there is a high risk of being found guilty

1 merely by association. Mr. Taskov argues that joinder in this case is inappropriate because there is no  
2 logical relationship between the alleged conduct of the Defendants. He asserts the offenses charged in  
3 the Indictment did not arise out of the same series of transactions, and joinder is not warranted under  
4 Rule 8(b) of the Federal Rules of Criminal Procedure. Specifically, Mr. Taskov is alleged to have  
5 participated in numerous property crimes, whereas his co-Defendants have allegedly committed acts of  
6 extortion, threats, or other violent crimes. Mr. Taskov will be forced to sit through prejudicial evidence  
7 at trial, and as a result, he cannot receive a fair trial. Mr. Taskov states he has already been prejudiced  
8 by two recent newspaper articles that outline violent acts allegedly committed by several of the co-  
9 Defendants. Lastly, Mr. Taskov argues that his interests are different from the co-Defendants.  
10 Specifically, he wishes as a speedy a trial as soon as possible, and his co-Defendants have stipulated to  
11 continue the trial date to enable defense counsel time need to review voluminous discovery.

12 In response, the government argues that the Defendants are properly joined under Rule 8(b)  
13 because all of the Defendants are charged in the Indictment (Dkt. #1) with the same property crimes.  
14 Specifically, all of the Defendants, including Mr. Taskov, are charged with conspiring to defraud  
15 various financial institutions and transporting and receiving stolen property obtained through the fraud  
16 scheme. The government asserts that all of the crimes charged in the Indictment were committed in  
17 furtherance of the conspiracy, and because they arise from the same transaction or series of transactions,  
18 the Motion to Sever (Dkt. #51) should be denied. The government contends that Mr. Taskov played a  
19 large role in the conspiracy, and his managerial part in the conspiracy is evidenced by the fact that only  
20 he and one other Defendant are charged in all thirty-two counts of the Indictment (Dkt. #1). Moreover,  
21 severance is not warranted even if co-Defendants are charged with grossly disproportionate crimes, or  
22 one co-Defendant is more culpable than another. Taskov's arguments concerning the newspaper article,  
23 likewise, are not a basis upon which to justify severance. Lastly, the government argues that Taskov's  
24 claim of an antagonistic defense and readiness for trial are vague and insufficient to justify severance.

## 25 DISCUSSION

### 26 Fed. R. Crim. P. 8(b)

27 Taskov cites Rule 8(b) and Rule 14(a) in support of his motion to sever. Fed. R. Crim. P. 8(b)  
28 governs joinder of defendants and provides:

1 The indictment or information may charge two or more defendants if they  
2 are alleged to have participated in the same act or transaction, or in the same  
3 series of acts or transactions, constituting an offense or offenses. The  
defendants may be charged in one or more counts together or separately. All  
defendants need not be charged in each count.

4 While Rule 8(a) governs joinder of offenses, Rule 8(b) governs when defendants may be joined  
5 for trial. “[M]ost courts have held that Rule 8(b) applies exclusively to issues of joinders of multiple  
6 defendants and that Rule 8(a) applies only in cases involving a single defendant charged with multiple  
7 offenses.” *United States v. Irizarry*, 341 F.3d 273, 287 (3rd Cir. 2003), *cert. denied*, 40 U.S. 1140. The  
8 Ninth Circuit has held that Rule 8(a) applies only to joinder of offenses against a single defendant, and  
9 the provisions of Rule 8(b) control when more than one defendant is named in an indictment. *United*  
10 *States v. Satterfield*, 548 F.2d 1341, 1344 (9th Cir. 1977).

11 A claim of misjoinder of offenses or parties under Rule 8 is a question of law reviewed *de novo*.  
12 *United States v. Sanchez-Lopez*, 879 F.2d 541, 550 (9th Cir. 1989). In determining whether two or  
13 more defendants are appropriately joined for trial under Rule 8(b), the court examines whether two or  
14 more defendants are alleged to have participated in the same act or transaction or in the same series of  
15 acts or transactions constituting an offense or offenses. *See* Fed.R.Crim.P. 8(b). Mere factual similarity  
16 between the events is not a sufficient basis for joinder. *United States v. Vasquez-Velasco*, 15 F.3d 833,  
17 843 (9th Cir. 1994). However, the term “transaction” is interpreted flexibly, and determining whether a  
18 “series” exists depends on whether there is a “logical relationship” between the transactions. *Id.* “A  
19 logical relationship is typically shown ‘by the existence of a common plan, scheme, or conspiracy.’” *Id.*  
20 at 844 (internal citations omitted). A logical relationship may also be shown if the common activity  
21 constitutes a substantial portion of the proof of the joined charges. *Id.*

22 Rule 8(b) is construed liberally in favor of joinder because joint trials conserve state funds,  
23 diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused  
24 of crimes to trial. *United States v. Baker*, 10 F.3d 1374, 1387 (9th Cir. 1993)<sup>1</sup>. “There is a preference  
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27 <sup>1</sup> *Baker* was overruled on other grounds by *United States v. Nordby*, 225 F.3d 1053 (9th Cir. 2000), which was, in  
28 turn, overruled on other grounds in *United States v. Buckland*, 289 F.3d 558 (9th Cir. 2002). However, the Ninth Circuit has  
recognized that *Baker*’s discussion of the legal principles governing severance of joint trials remains good law. *United States*  
*v. Fernandez*, 388 F.3d 1199, 1241 n.27 (9th Cir. 2004).

1 in the federal system for joint trials of defendants who are indicted together.” *Zafiro v. United States*,  
2 506 U.S. 534, 537 (1993). “Defendants jointly charged in conspiracy cases are presumptively to be  
3 jointly tried.” *Baker*, 10 F.3d at 1387 (citing *United States v. Escalante*, 637 F.2d 1197, 1201 (9th Cir.),  
4 *cert. denied*, 449 U.S. 856 (1980)). Furthermore, the Ninth Circuit noted in *United States v. Fernandez*,  
5 “[A] joint trial is particularly appropriate where the co-defendants are charged with conspiracy, because  
6 the concern for judicial efficiency is less likely to be outweighed by the possible prejudice to the  
7 defendants when much of the same evidence would be admissible against each of them in separate  
8 trials.” 388 F.3d at 1242.

9 **Fed. R. Crim. P. 14(a)**

10 Rule 14 governs the severance of both defendants and charges. *Vasquez-Velasco*, 15 F.3d at  
11 845. Even if joinder is proper under Rule 8(b), the court may sever the defendants’ trials, order separate  
12 trials of counts, or provide other relief that justice requires if joinder “appears to prejudice a defendant  
13 or the government.” Fed.R.Crim.P. 14(a). Rules 8(b) and 14 are designed to promote economy and  
14 efficiency and avoid multiple trials where those objectives can be achieved without substantial  
15 prejudice to the right of the defendants to a fair trial. *See Zafiro*, 506 U.S. at 540; *Baker*, 637 F.3d at  
16 1201. The Ninth Circuit has recognized that “some prejudice is inherent in any joinder of defendants.”  
17 *Baker*, 637 F.3d at 1201. In deciding whether to sever properly-joined defendants, the court must  
18 weigh the potential for prejudice against the concern for judicial economy. *United States v. Kennedy*,  
19 564 F.2d 1329 (9th Cir. 1977). However, “when defendants properly have been joined under Rule 8(b),  
20 a district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial  
21 would compromise a specific trial right of one of the defendants, or prevent the jury from making a  
22 reliable judgment about guilt or innocence.” *Zafiro*, 506 U.S. at 539. “Rule 14 does not require  
23 severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to  
24 the district court’s sound discretion.” *Id.* at 538-39.

25 The court’s power to order severance “rests within the broad discretion of the District Court as  
26 an aspect of its inherent right and duty to manage its own calendar.” *United States v. Gay*, 567 F.2d  
27 916, 919 (9th Cir. 1978). The court’s denial of a motion to sever is reviewed for abuse of discretion.  
28 *See Fernandez*, 388 F.3d at 1241. “The test for determining abuse of discretion in denying severance

1 under Rule 14 is whether a joint trial would be so prejudicial that the trial judge could exercise his  
2 discretion in only one way.” *U.S. v. Escalante*, 637 F.2d at 1201.

3 Prejudice under Rule 14(a) may result from: (1) the defendants’ antagonistic or mutually  
4 exclusive defenses, *United States v. Angwin*, 271 F.3d 786, 795 (9th Cir. 2001), *overruled on other*  
5 *grounds*, *United States v. Lopez*, 484 F.3d 1186 (9th Cir. 2007); (2) inappropriate conduct by a co-  
6 defendant’s attorney, for example, an opening statement blaming other defendants, *U.S. v. Gillam*,  
7 167 F.3d 1273, 1277 (9th Cir. 1999); (3) a co-defendant’s refusal to give exculpatory testimony in a  
8 joint trial due to the potential for self-incrimination, *United States v. Castro*, 887 F.2d 988, 998 (9th  
9 Cir. 1989); (4) a co-defendant’s non-judicial confession which incriminates the defendant, even when  
10 the confession is introduced only against the co-defendant, *Bruton v. United States*, 391 U.S. 123, 137  
11 (1968); (5) admission of evidence admissible only against a co-defendant; *United States v. Cruz*,  
12 127 F.3d 791, 799 (9th Cir. 1997), *abrogated on other grounds*, *United States v. Jiminez Recio*,  
13 537 U.S. 270; and (6) a co-defendant’s comment on a defendant’s failure to testify, *De Luna v. United*  
14 *States*, 308 F.2d 140, 141 (5th Cir. 1962), *cited with approval*, *United States v. De La Cruz Bellinger*,  
15 422 F.2d 723, 726-27 (9th Cir. 1970).

16 The Supreme Court has also recognized that “[w]hen many defendants are tried together in a  
17 complex case, and they have markedly different degrees of culpability, joinder may be prejudicial  
18 because evidence of a co-defendant’s wrongdoing could erroneously lead a jury to conclude that a  
19 defendant was guilty by mere association.” *Zafiro*, 506 U.S. at 539. The Ninth Circuit has also  
20 recognized that prejudice may result from a “mega-trial” involving a large number of defendants and  
21 charges. *Baker*, 10 F.3d at 1390-92. In *Baker*, fifteen of the twenty-four defendants originally charged  
22 in a forty-four count superseding indictment were tried together. On appeal following the criminal  
23 convictions, the Ninth Circuit described this case as “one of the lengthiest and costliest trials in this  
24 nation’s history.” *Id.* at 1386. The Ninth Circuit commented that it was called upon to consider not  
25 only the approximately fifty issues raised on appeal “but the practical and human limitations of our jury  
26 system itself.” *Id.* The trial lasted more than sixteen months. Over 250 witnesses were called and  
27 thousands of exhibits were admitted. Presentation of the evidence involved over 2,000 narcotics  
28 transactions spanning an eleven-year period. The decision described the “staggering hardships” and

1 burdens that a joint trial of the scope and duration of the *Baker* trial entailed, finding that “these burdens  
2 fall not only on the defendants, but on defense counsel, prosecutors, the jury, the district court, the court  
3 of appeals, and the taxpayers.” *Id.* at 1390-92. The court concluded that “the risk of prejudice to the  
4 defendants increases sharply with the number of defendants and the length of the trial” but held the  
5 district court did not abuse its broad discretion in denying the defendants’ motion for severance. *Id.* at  
6 1390

7 In this case, all of the Defendants are charged in count one of the Indictment (Dkt. #1) with  
8 conspiracy to committ offenses against the United States. Count one describes the manner and means  
9 of the conspiracy and the Defendants’ alleged involvement in it. Specifically, it alleges that the  
10 Defendants participated in complex fraud schemes to obtain vehicles from automobile dealerships in  
11 Nevada and elsewhere in the United States by obtaining loans through false representations and specific  
12 schemes involving straw buyers. Once Defendants obtained the vehicles, they allegedly sold, rented, or  
13 leased the vehicles to third parties in the United States or smuggled them to Eastern Europe. No  
14 payments were made to the financial companies that funded the automobile loans.

15 Counts two through nine allege wire fraud and aiding and abetting by Taskov and two of his co-  
16 Defendants, Dimitrov and Gueorguiev. Counts ten through fifteen allege wire fraud and aiding and  
17 abetting by Taskov, Dimitrov, and Daskalov. Counts sixteen through twenty four allege wire fraud and  
18 aiding and abetting against Taskov, Dimitrov, and Milushev. Count twenty-five alleges interstate  
19 transportation of stolen money and aiding and abetting by Taskov, Dimitrov, and Milushev. Count  
20 twenty-six alleges interstate transportation of stolen money by Taskov, Dimitrov, and Daskalov. Count  
21 twenty-seven alleges interstate transportation of stolen money and aiding and abetting against Taskov,  
22 Dimitrov, and Milushev. Count twenty-eight alleges interstate transportation of stolen money and  
23 aiding and abetting against Taskov, Dimitrov, and Daskalov. Count twenty-nine alleges interstate  
24 transportation of stolen money and aiding and abetting against Taskov, Dimitrov, Daskalov, and  
25 Nikolay Mladenov. Count thirty alleges receipt of converted and fraudulently taken property and aiding  
26 and abetting against Taskov, Dimitrov, Daskalov, and Mladenov. Count thirty-one alleges receipt of  
27 converted and fraudulently taken property and aiding and abetting against Taskov, Dimitrov, and  
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1 Gueorguiev. Count thirty-two alleges interstate transportation of stolen money and aiding and abetting  
2 against Taskov, Dimitrov, Gueorguiev, and Mladenov.

3 Each of the charges in the Indictment (Dkt. #1) relate to various schemes allegedly used by  
4 Defendants to obtain vehicles, fraudulently purchase vehicles, transport them across state lines or  
5 outside the United States, and wire funds from the lease, sale, or rental of the vehicles. Each charge  
6 arises out of the same series of transactions. *See U.S. v. Jawara*, 474 F.3d 565, 573 (9th Cir. 2007)  
7 (court inquires whether commission of one of the offenses either depended upon or led to the  
8 commission of the other; or whether proof of one act either constituted or depended upon proof of the  
9 other); *see also United States v. Anderson*, 642 F.2d 281, 284 (9th Cir. 1981) (stating “When the joined  
10 counts are logically related, and there is a large area of overlapping proof, joinder is appropriate”)  
11 (*citing United States v. Roselli*, 432 F.2d 879, 899 (9th Cir. 1970)). The Defendants are, therefore,  
12 properly joined in the same Indictment (Dkt. #1) pursuant to Fed.R.Crim.P. 8(b).

13 This conclusion does not end the court’s analysis because “Rule 14 recognizes that even when  
14 counts are properly joined under Rule 8(b), severance of the counts may be appropriate to avert  
15 prejudice to a defendant. *Vasquez-Velasco*, 15 F.3d at 845. A defendant moving to sever has a heavy  
16 burden of showing that a joint trial would compromise a specific right or prevent the jury from making  
17 a reliable judgment about guilt or innocence. *Baker*, 10 F.3d at 1387-89. Taskov has not demonstrated  
18 that sufficient prejudice would result to justify severance, especially where, as here, the charges in the  
19 Indictment (Dkt. #1) are so related that evidence would overlap if severance were ordered. Moreover,  
20 the allegations in the Indictment (Dkt. #1) belie Taskov’s position that his role in the alleged conspiracy  
21 was minor. Taskov is charged in each of the thirty-two counts in the Indictments, and the government  
22 asserts he was a leader in the conspiracy and had a managerial role in it. There is little risk of evidence  
23 “spilling over” to affect the jury’s perception of Taskov’s guilt or innocence where, as here, Taskov is  
24 charged in every count of the Indictment (Dkt. #1). *See, e.g., U.S. v. Ramirez*, 710 F.2d 535, 547 (9th  
25 Cir. 1983). Taskov has not shown that the prejudice from a joint trial would deprive him of a fair trial,  
26 and severance is not justified on this ground.

27 Likewise, Taskov’s claim that he has already been prejudiced by the bad press surrounding one  
28 of his co-Defendants is insufficient to warrant severance. The negative publicity involves statements

1 made by co-Defendant Dimitrov in intercepted/wiretapped phone calls threatening to harm witnesses.  
2 Any potential prejudice related to negative publicity associated with this case or Taskov's co-  
3 Defendant(s) is a matter to be addressed during jury selection. Although a defendant is constitutionally  
4 entitled to an impartial jury, this requirement does not limit jury membership to persons completely  
5 ignorant of the facts and issues of a case. *See Irvin v. Dowd*, 366 U.S. 717, 722 (1961); *United States v.*  
6 *Croft*, 124 F.3d 1109, 1116 (9th Cir. 1997). The court must decide whether publicity has caused jurors  
7 to form opinions such that they cannot impartially judge the guilt or innocence of a defendant based  
8 upon evidence presented at trial. *See Patton v. Yount*, 467 U.S. 1025, 1035 (1984); *United States v.*  
9 *Collins*, 109 F.3d 1413, 1416-17 (9th Cir. 1997). Furthermore, any inflammatory evidence admitted  
10 against a co-defendant may be neutralized by an appropriate cautioning instruction. *See United States*  
11 *v. Castro*, 881 F.2d 988, 998 (9th Cir. 1989).

12 Taskov's claim that "[h]is defense is different" from those of his co-Defendants is also  
13 insufficient to justify severance. A defendant will only be entitled to severance based on mutually  
14 antagonistic defenses if "the core of the co-defendant's defense is so irreconcilable with the core of his  
15 own defense that the acceptance of the co-defendant's theory by the jury precludes acquittal of the  
16 defendant." *United States v. Cruz*, 127 F.3d 791, 799 (9th Cir. 1997) (*quoting Throckmorton*, 87 F.3d  
17 at 1072); *see also United States v. Tootick*, 952 F.2d 1078, 1081 (9th Cir. 1991) (mutually exclusive  
18 defenses said to exist when acquittal of one co-defendant would necessarily call for the conviction of  
19 the other); *United States v. Hernandez*, 952 F.2d 1110, 1116 (9th Cir. 1991) (to obtain severance on  
20 basis of antagonistic defenses, defendant must show that acceptance of one party's defense will  
21 preclude acquittal of the other party). The district court may also "reduce any potential confusion  
22 between the defendants by instructing the jury that it should evaluate the evidence against each  
23 defendant separately and that the verdict as to one defendant should not control the verdicts of the  
24 others." *Id.* at 800 (*citing Zafiro*, 506 U.S. at 540-41). Taskov has not articulated his own defense  
25 theory or established that any of his co-Defendants will actually assert antagonistic defenses. Because  
26 Taskov does not assert his defense is mutually exclusive and irreconcilable to one or more of his co-  
27 Defendants, he is not entitled to severance on this ground.

28 ///

1           Lastly, Taskov asserts that severance is required because he “wishes as speedy a trial as  
2 possible.” He believes that if his case is tried separately, it will be tried sooner and will not be as  
3 lengthy as a joint trial. “The Speedy Trial Act provides a seventy-day limit from the date of the . . .  
4 indictment or the date on which the defendant appears before a judicial officer of the court, whichever  
5 occurs last, to the commencement of the trial. Certain periods of time are excludable.” *United States v.*  
6 *Dota*, 33 F.3d 1179, 1182 (9th Cir. 1994) (citing *United States v. Nash*, 946 F.2d 679, 680 (9th Cir.  
7 1991); *see generally* 18 U.S.C. § 3161(h). The Speedy Trial Act clock is synchronized for all  
8 defendants joined in an indictment, and because the Defendants are joined for trial any reasonable  
9 period of time excluded for one Defendant is excluded for all of them. *See* 18 U.S.C. § 3161(h)(6) and  
10 (7). Here, Taskov was joined for trial with his co-Defendants pursuant to the provisions of the Speedy  
11 Trial Act. He has not stated any reason other than a generalized desire to be tried more quickly. This is  
12 insufficient to justify severance.

13           In conclusion, the nature of the charges involve a substantial overlap in the evidence presented  
14 to support the conspiracy charge. A joint trial is especially desirable in a conspiracy case. *Fernandez*,  
15 388 F.3d at 1199. Thus, although there is certainly a possibility of some prejudice to the defendants in  
16 a joint trial, the court finds that the interests of judicial efficiency outweigh the possible prejudice. The  
17 court also finds that this case is not so complex that the jury is unlikely to be able to compartmentalize  
18 the evidence and evaluate each defendant’s culpability individually. Moreover, the appropriate use of  
19 limiting instructions will reduce or eliminate any possibility of prejudice arising from a joint trial.

20           For all the foregoing reasons,

21           **IT IS ORDERED** that Taskov’s Motion to Sever (Dkt. #51) is DENIED.

22           Dated this 27th day of August, 2010.

23  
24             
25           PEGGY A. ZEEN  
26           UNITED STATES MAGISTRATE JUDGE  
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